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**FINAL NOTICE**

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To: **Mr. Eric John Stevens**

Date **1 October 2007**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to make a prohibition order against you.**

**1. ACTION**

- 1.1. The FSA gave you, Mr Eric John Stevens, a Decision Notice on 1 October 2007 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to make a prohibition order against you, to prohibit you from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

- 1.2. You agreed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. You agreed to settle at an early stage of the FSA's investigation on the basis of the Prohibition Order.
- 1.4. Accordingly, for the reasons set out below, and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you.

## **2. REASONS FOR THE ACTION**

2.1. The misconduct summarised below represents a failure by you to comply with the following Statements of Principle for Approved Persons:

- (1) Statement of Principle 1, under which an approved person must act with integrity in carrying out his controlled function;
- (2) Statement of Principle 2, under which an approved person must act with due skill, care and diligence in carrying out his controlled function;
- (3) Statement of Principle 6, under which an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function;
- (4) Statement of Principle 7, under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.2. As a result of the misconduct, we consider that you are not fit and proper, having regard to:

- (1) your lack of honesty and integrity in relation to:
  - (a) the submission to lenders of mortgage applications based on false information;

- (b) your failure to be open and honest in response to the FSA during the course of two compelled interviews conducted as part of the investigation;
    - (c) your failure to demonstrate an ability and willingness to comply with the requirements placed on you by the Act as well as with other legal and professional obligations and professional standards; and
  - (2) your failure to satisfy the FSA that you are sufficiently competent and capable to perform controlled functions in relation to regulated activities.
- 2.3. These failures are so serious that we consider that you would not be able to satisfy the FSA of your ability to comply with regulatory requirements, professional obligations and ethical standards. If you continued to perform any functions in relation to regulated activities you would pose a risk to consumers, to confidence in the financial system, and to the fulfilment of the FSA's financial crime objective.
- 2.4. The account which you gave to the FSA during interview is inconsistent with the accounts provided to the FSA by other witnesses. In light of this, and the significant proportion of the mortgage applications submitted by the authorised firm of which you are the sole director, Select Mortgage Services (Bournemouth) Limited ("SMS"), which we reviewed and found were based on false information, we have concluded that you were knowingly involved in the submission of those applications, and that you have deliberately attempted to mislead the FSA as to the extent of your knowledge (**Statement of Principle for Approved Persons 1**).
- 2.5. Your conduct caused the business of SMS and that of lenders to be used by third parties to commit financial crime. By your failure to identify serious and obvious risks from your business practices, the FSA has concluded that you fell below minimum standards required of approved persons (**Statements of Principle for Approved Persons 2, 6 and 7**).
- 2.6. You performed all the controlled functions at SMS. The FSA found that there were major systemic failures within SMS, and you accept this as an accurate conclusion,

and that you were accountable for these failures (**Statements of Principle for Approved Persons 6 and 7**).

### **3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

3.1. The FSA's statutory objectives, set out in section 2(2) of the Act include the reduction of financial crime, the maintenance of market confidence, and the protection of consumers.

3.2. The FSA has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual to prevent that individual from performing a specified function; any function falling within a specified description; or any function, if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

#### **FSA's policy for exercising its power to make a prohibition order**

3.3. The FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform. The FSA policy in relation to the decision to make a prohibition order or to withdraw an individual's approval is set out in Chapter 9 of the Enforcement Guide ("EG").

3.4. In particular EG9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

3.5. EG9.5 says that the scope of a prohibition order will depend on the range of activities that the individual performs in relation to regulated activities, the reasons why he is

not fit and proper and the severity of risk which he poses to consumers or the market generally.

- 3.6. EG9.8 to 9.14 provide guidance in circumstances where the FSA has concerns about the fitness and propriety of an approved person.
- 3.7. In particular EG9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. The FSA will, in deciding whether to withdraw its approval and/or make a prohibition order, consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 3.8. EG9.9 states that when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:
  - (1) the matters set out in section 61(2) of the Act;
  - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT2.1 (Honesty, integrity and reputation); FIT2.2 (Competence and capability); and FIT2.3 (Financial soundness). The criteria include:
    - (a) **honesty, integrity and reputation:** this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards; and
    - (b) **competence and capability:** this includes an assessment of the individual's skills to carry out the controlled function that he is performing.
- 3.9. The FSA will also consider:

- (1) whether and to what extent the approved person has:
  - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of Approved Persons; or
  - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness;
- (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or any other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

3.10. EG9.10 states that the FSA may have regard to the cumulative effect of a number of factors and it may take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.

3.11. EG9.12 provides examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include severe acts of dishonesty, for example, which may have resulted in financial crime, serious lack of competence, and serious breaches of the Statements of Principle for Approved Persons.

### **The Statements of Principle and Code of Practice for Approved Persons**

- 3.12. The Statements of Principle and Code of Practice for Approved Persons (“APER”) set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. They further describe factors to be taken into account in determining whether an approved person’s conduct complies with a Statement of Principle.
- 3.13. APER3.1.3G stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 3.14. APER3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 3.15. In this case the FSA considers the most relevant Statements of Principle to be those referred to in paragraph 2.1 of this Final Notice.
- 3.16. APER4.1 sets out examples of behaviour which, in the opinion of the FSA, does not comply with Statement of Principle 1. In particular, APER4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA does not comply with Statement of Principle 1. APER4.1.4E provides examples of such conduct, which includes providing false or inaccurate documentation or information, and providing false or inaccurate information to the FSA. APER4.1.6E states that deliberately failing to inform, without reasonable cause, a customer or the FSA of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, does not comply with Statement of Principle 1.
- 3.17. APER4.2 sets out examples of behaviour which, in the opinion of the FSA, does not comply with Statement of Principle 2. In particular, APER4.2.5E states that recommending an investment to a customer or carrying out a discretionary transaction

for a customer where he does not have reasonable grounds to believe that it is suitable for that customer does not comply with Statement of Principle 2.

- 3.18. APER4.6 sets out examples of behaviour which, in the opinion of the FSA, does not comply with Statement of Principle 6. In particular, APER4.6.1 provides that an approved person failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible does not comply with Statement of Principle 6. APER4.6.4 states that another example of behaviour which is non-compliant with Statement of Principle 6 would be permitting transactions to take place without sufficient understanding of the risks involved.
- 3.19. APER4.7 provides examples of conduct which, in the opinion of the FSA, does not comply with Statement of Principle 7. This includes failing to take reasonable steps to:
- (1) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the firm's regulated activities (APER4.7.3E);
  - (2) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the firm's regulated activities (APER4.7.4E);
  - (3) adequately inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place) (APER4.7.5E);
  - (4) ensure his firm's compliance with the relevant requirements and standards of the regulatory system (and to ensure that any staff are aware of the need for compliance) (APER4.7.11G); and
  - (5) ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently (APER4.7.12G).



## **Regulatory requirements**

- 3.20. The section of the FSA Handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.21. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an approved person in accordance with EG9.9.
- 3.22. FIT1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and the most important considerations will be the person’s honesty integrity and reputation, competence and capability and financial soundness.
- 3.23. In determining a person’s honesty, integrity and reputation, FIT2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT2.1.3G. The guidance referred to includes:
- (1) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;
  - (2) whether the person has contravened any of the requirements and standards of the regulatory system (FIT2.1.3G(5)); and
  - (3) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT2.1.3G(13)).
- 3.24. In determining a person’s competence and capability FIT2.2 provides that the FSA will have regard to matters including but not limited to whether the person satisfies

the relevant requirements of the FSA's Training and Competence sourcebook (TC) in relation to the controlled function, and whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

#### **4. REASONS FOR THE PROPOSED ACTION**

##### **Background**

4.1. You are a director of SMS. With effect from 31 October 2004, you were approved to perform the following controlled functions:

- (1) Director (CF1)
- (2) Apportionment and Oversight (CF8)
- (3) Money Laundering Report (CF11)
- (4) Finance (CF13)
- (5) Risk Assessment (CF14)
- (6) Internal Audit (CF15)
- (7) In addition, from 14 January 2005, you were approved to perform the Significant Management (Financial Resources) function (CF19) with responsibility for Insurance Mediation.

4.2. SMS operated from your home address. You did not employ any staff and, although your wife is recorded with Companies House as the Company Secretary of SMS, you told us that she had no involvement in the day-to-day business. SMS operated as a mortgage and insurance broker completing, predominantly, mortgage business.

4.3. A member of the public contacted the FSA's Consumer Contact Centre and alleged that he had met you to discuss the possibility of applying for a mortgage. It is alleged that you said that if the customer was to complete an application form for a mortgage in which he (the customer) was recorded as self-employed, then you could arrange for a set of accounts for the fictitious business to be produced at a cost of £200 in cash.

These accounts would verify a false income for the customer which had been inflated to permit the customer to obtain a much larger mortgage than was justified by his actual income. The customer would be required to pay a further £500 cash to the broker upon completion of the mortgage contract.

4.4. In response to the allegations made by the member of the public, the FSA's Small Firms Division ("SFD") visited SMS on 7 April 2006. During the visit, files for regulated mortgage business completed by you were reviewed. A number of issues were identified.

- (1) You said that you did not realise that you needed to issue a C/IDD document.
- (2) You said that SMS did not have a complaints procedure.
- (3) The records of clients' needs and circumstances and the reasons for SMS' recommendations were inadequate and it was unclear how assessments of affordability and suitability had been carried out.
- (4) The scope of service of SMS was "Whole of Market" but no "High Street" lenders had been recommended.
- (5) No KFIs had been retained on file for clients.
- (6) There was no proof of income on the client files; there were inconsistencies between applicants' incomes as recorded on the Fact Find documents compared to that recorded on the corresponding on-line mortgage applications. The incomes and/or occupations of some applicants appeared to be suspicious and the same accountant featured in more than 50% of the files reviewed.

4.5. These circumstances were referred to the FSA's Enforcement Division ("Enforcement") on 12 July 2006.

#### **The Enforcement investigation**

4.6. Enforcement analysed 49 client files completed by you since 31 October 2004, which had been recorded on SMS' Business Register. In each case the applicant was shown as self-employed and there appeared to be grounds for suspicion about the level of

their income. A total of 25 of the 49 client files were chosen as a sample for more detailed analysis.

4.7. For the 25 selected cases the following enquiries were completed.

- (1) In each case a copy of the file held by the appropriate lender was obtained.
- (2) Enquiries were made of HM Revenue and Customs regarding the income of each client.
- (3) Copies of Accountant's Certificates and associated papers were obtained from relevant accountants.
- (4) A chartered accountant ("Accountant A") who had signed the Accountant's Certificates discovered in the sample files was interviewed to gain his version of the events.
- (5) An unqualified accountant ("Accountant B") who had been involved in the production of the Accountant's Certificates signed by Accountant "A" was interviewed to gain his version of the events.
- (6) Three clients contacted by Enforcement verified that the incomes recorded on their respective mortgage application forms were inflated compared to their actual incomes. They each gave an account of their dealings with you.
- (7) You were interviewed on two separate occasions. On the second occasion Enforcement's findings with regard to each of 22 of the 25 cases were put to you and you were given an opportunity to explain the extent of your knowledge about each client's income and the extent of any checks you had carried out.

4.8. The conclusions reached as a result of the analysis of the files and the enquiries made, as listed at paragraph 4.7 above, were that:

- (1) you were solely responsible for the running of SMS and for its compliance oversight;

- (2) false information, particularly relating to clients' occupations and incomes, was entered on mortgage application forms in 22 of the files;
- (3) false information relating to clients' incomes was entered upon Accountant's Certificates which had been requested by lenders;
- (4) false accounts relating to clients' businesses were produced in conjunction with the Accountant's Certificates which were provided to lenders;
- (5) you made insufficient checks of clients' occupations and incomes in 22 cases;
- (6) you recorded false information relating to clients' occupations and incomes on mortgage application forms (you do not accept that you did so knowingly);
- (7) you had not put in place and implemented adequate systems within SMS to prevent the occurrence of financial crime;
- (8) according to some witnesses, you received cash payments in addition to the commission obtained from lenders (but you do not accept that this occurred); and
- (9) you did not put in place adequate systems within SMS to deal with complaints, record-keeping, the assessment of affordability and suitability, or the issue of C/IDD documents.

4.9. In summary, in addition to the matters identified during SFD's visit which identified your failure to comply with regulatory requirements and standards concerning mortgage advice, the evidence obtained during the Enforcement investigation shows that mortgage applications containing false information were submitted by you to a number of different lenders. Additionally, in a number of cases, Accountants' Certificates containing false information were later submitted to lenders. Witnesses have said that you asked for and received cash payments for submitting such false information in support of mortgage applications.

4.10. These issues impact upon your integrity and your competence and capability regarding the management of SMS' business.

## **5. ANALYSIS OF CONDUCT IN ISSUE**

- 5.1. The misconduct summarised in section 4 above is considered to be very serious. Although you deny knowingly arranging for mortgage applications to be submitted to lenders supported by false information, you accept that your failure to implement adequate systems and controls at SMS led to the submission to lenders of such applications. At the very least, you caused SMS to be used as a conduit for financial crime.
- 5.2. The majority of the mortgage applications submitted by SMS, which were analysed by the FSA, were found to be based on false information. These applications represent a significant proportion of SMS' business during the period of breach.
- 5.3. Having assessed your comments in a taped interview in comparison with other documentary and witness evidence obtained by the FSA, we have concluded that your denial that you were knowingly involved is not credible, and that you may therefore have deliberately provided false and inaccurate information to the FSA during the course of the investigation as to the extent of your involvement in the submission of applications based on false information.
- 5.4. The other misconduct described above relates to your failure to comply with relevant regulatory requirements and standards concerning mortgage advice and represent serious failings in the systems and controls in place at SMS during the period of breach. We consider that they demonstrate your lack of competence and capability as well as your lack of readiness and willingness to comply with regulatory requirements and standards, professional obligations and ethical standards. By continuing to perform any function in relation to regulated activities, you would present a risk to consumers.
- 5.5. Taking action against you supports the FSA's financial crime, market confidence and consumer protection objectives.

### **Relevant period of breach**

- 5.6. The period of breach is from 31 October 2004 to 7 April 2006.

## **6. ANALYSIS OF THE SANCTION**

6.1. You are not fit and proper to perform any functions in relation to regulated activities because you have demonstrated a lack of competence and capability in the conduct of your controlled functions at SMS as well as a lack of integrity by reference to:

- (1) the submission to lenders of mortgage applications based on false information;
- (2) your failure to be open and honest in response to the FSA during the course of two compelled interviews conducted as part of the investigation; and
- (3) your failure to demonstrate ability and willingness to comply with the requirements placed on you by the Act as well as with other legal and professional obligations and professional standards.

6.2. You have failed to comply with Statements 1, 2, 6 and 7 of the Statements of Principle for Approved Persons.

6.3. The FSA has considered the relevance and materiality of the matters indicating unfitness and the length of time since the matters indicating unfitness occurred, the particular controlled functions you performed at SMS, the nature and activities of SMS and the markets in which SMS operated. The FSA has also taken into consideration your lack of any previous disciplinary record.

6.4. The FSA considers that you pose a risk to consumers, to confidence in the financial system and to fulfilment of its financial crime objective. The FSA has concluded that its regulatory objectives can best be achieved by making a prohibition order against you.

## **7. DECISION MAKERS**

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Executive Decision Makers on behalf of the FSA.

## **8. IMPORTANT**

8.1. This Final Notice is given to you in accordance with section 390 of the Act.

### **Publicity**

- 8.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

### **FSA contacts**

- 8.3. For more information concerning this matter generally, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan

Head of Department

FSA Enforcement Division